Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

Darwin and Janet Cogger,

Petitioners,

v.

County of Becker, State of Minnesota,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do provisions of federal law prohibit assessment of real property tax upon a manufactured home, vinyl skirting, three storage sheds, two wooden decks, and a 8' X 6' porch of Relators?

2. Does County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251 (1992), grant the States the authority to reclassify a manufactured home as real property so that a real estate tax may be imposed?

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The trial court ruled that Becker County has authority to tax the subject property of Relators, and that the subject property is real property as a matter of law.

CITATIONS OF OPINIONS AND ORDERS BY COURTS

1. Finding of Fact, Conclusions of Law and Order for Judgment, with Memorandum Minnesota Tax Court File No. C3-02-1625 Hon. Sheryl A. Ramstad, dated February 3, 2004.

2. Order Minnesota Supreme Court File No. A04-713, Helen Meyer, J., dated January 20, 2005.

JURISDICTIONAL STATEMENT

1. The Transcript of Judgment was entered on March 21, 2005, in Minnesota Supreme Court File No. A04-713.

2. The United States Supreme Court has federal jurisdiction in this matter pursuant to:

   Article I, Section 8, Constitution of the United States (Indian Commerce Clause);

   Article II, Section 2, Constitution of the United States (Treaty Power given to the Executive Office);

   28 U.S.C. §1360(b);

   28 U.S.C. §2403(b).

3. This counsel has provided the Minnesota Attorney General the 28 U.S.C. §2403(b) notification as required by Rule of the United States Supreme Court 29.4(c).

STATUTES

1. U.S.C. §1360(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or

any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

2. M.S. §273.125(b) Subd. (8)(b) A manufactured home that meets each of the following criteria must be valued and assessed as an improvement to real property, the appropriate real property classification applies, and the valuation is subject to review and the taxes payable in the manner provided for real property: (1) the owner of the unit holds title to the land on which it is situated; (2) the unit is affixed to the land by a permanent foundation or is installed at its location in accordance with the Manufactured Homes Building Code in section 327.31 to 327.34, and rules adopted under those sections, or is affixed to the land like other real property in the taxing district; and (3) the unit is connected to public utilities, has a well and septic taiik system, or is serviced by water and sewer facilities comparable to other real property in the taxing district.

STATEMENT OF MATERIAL FACTS

This matter was brought before the Tax Court upon the Petition of Relators for relief from assessment of real property tax on a manufactured home, vinyl skirting, three storage sheds, two wooden decks, and a 8' X 6' porch (hereinafter Subject Property). Relators claim Subject Property were improperly taxed as real property in violation of 28 U.S.C.A. §1360 and Bryan v. Itasca County, 426 U.S. 373, 96 Sup.Ct. 2102, 48 L.Ed.2d 710 (1975). Relators claim the Respondent lacks jurisdiction to assess such tax and Subject Property is personal property, and therefore exempt from state taxation. Respondent contends that M.S. §273.125 defines Subject Property as real property and is therefore subject to taxation.

Both parties stipulate that the subject property is within the boundaries of the White Earth Indian Reservation, the Relators are enrolled members of the tribe, the subject property is not affixed to permanent foundations, that the manufactured home still has the axles and hitch. Relators purchased the manufactured home from a dealer outside the reservation boundaries and the home was delivered and installed upon the Relators fee title real estate. Respondent has not rebutted the expert testimony that the property may be easily removed from the real estate.

Disposition.

The trial court held Respondent has authority to tax Subject Property and concluded as a matter of law that Subject Property is real property. The Minnesota Supreme Court affirmed the Tax Court holding.

The issue of the federal question was first raised before the Minnesota Tax Court on a Summary Judgment Motion by Relators on May 23, 2002. The trial court held that there were material issues of fact and set the matter for trial. On page 8 of the Findings of Fact, Conclusions of Law and

Order for Judgment the Hon. Sheryl Ramstad held "Under the Yakima and Cass County [Cass County v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 Sup.Ct. 1904, 141 L.Ed. 90 (1998)] holding, the County does have authority to impose *ad valorem* taxes upon the land even though it is located within the boundaries of a federally recognized tribe and Petitions are enrolled members." The court failed to address the issue that the subject property did not increase the value of the real estate and was therefore not *ad valorem*.

The Minnesota Supreme Court issued an Opinion where it held "The Yakima Court made it clear that Congress intended to grant the states authority to assess *ad valorem* taxes on real property owned by Indians in fee title on Indian land." The Minnesota Supreme Court did not address the issue that the subject property did not add value to the land and could not be subject to an *ad valorem* tax by definition. Further, it held "Implicit in the state's power to tax is the authority to define what property or goods to tax, subject of course to constitutional limitations. Thus, it follows that Congress granted to the states the authority to determine the definition of real property." (Both citations are from page 6 of the Minnesota Supreme Court Opinion.) No other analysis is given to how this power is not in conflict with U.S.C. §1360(b) limitations.

REASONS FOR ALLOWANCE OF THE WRIT

This matter is precisely as stated in Rule of the United States Supreme Court 10(c), where a state court of last resort has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The Indians of this country have long been held in *loco parentis* by the federal courts, protecting a vulnerable minority class that has a unique sovereign status within our

own country.

The Respondent lacks jurisdiction to assess real property tax on Subject Property of Relators pursuant to the plain language of 28 U.S.C.A. §1360(b). It reads **"Nothing in this section shall authorize** the alienation, encumbrance, or **taxation** of any real or **personal property,** including water rights, belonging to any **Indian** or Indian tribe, band or community that is held in trust by the United States; ...**or shall confer jurisdiction upon the State to adjudicate,** in probate proceeding or otherwise, the ownership or right to possession of such property **or any interest therein."** (emphasis added). While the statute does not specifically address non-trust property, it is a matter of construction that the state has only such power over Indians and Indian Reservations as is specifically granted by the federal government. "Indians stand in a special relation to the federal government from which the states are excluded unless the Congress has manifested a clear purpose to terminate [a tax] immunity and allow states to treat Indians as part of the general community." Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 613-614, 63 Sup.Ct. 1284, 87 L.Ed. 1612 (1943) (Murphy, J., dissenting) cited in Bryan v. Itasca County, 426, U.S. 373, 96 Sup.Ct. 2102, 48 L.Ed.2d 710 (1975).

Broad state power of taxation on reservation Indians would be a severe infringement on tribal sovereignty that would amount to termination of sovereignty. If Congress wishes to terminate tribal sovereignty the mechanism is very specific. "Congress was fully aware of the means by which termination could be effected. But clear termination language was not employed in the Act. This being so, we are not inclined to infer an intent to terminate ...A Congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." Mattz v. Arnett, 412 U.S. 481, 504-505, 93 Sup.Ct. 2245, 37 L.Ed.2d 92 (1973), cited in Bryan, *supra.*

The distinction of whether the land is trust property or fee simple does not alter the lack of a specific grant to tax personal property of a reservation Indian in federal law. In this case the Respondent acknowledges that it cannot tax personal property of the Relators, but then relies upon state statute that reclassifies personal property as real property and assesses a tax on the property. The practice could be referred to as "modern alchemy". This transmutation allows the state to assess a tax on property that is otherwise admitted as not taxable.

The ability to transform the classification of property yields a "slippery slope" that could infringe upon the property rights of Indians. Any personal property that is currently beyond state taxation could simply be defined as real property by legislation as long as it was on fee simple land. The car, boat, machinery, or even fishing rod becomes real property at the stroke of a legislative pen. This example assaults the senses as absurd, but so does the reclassification of the Subject Property when evaluated against the common law definitions of personal and real property.

The manufactured home and other Subject Property were personal property before application of M.S. §273.125. When Relators purchased the manufactured home fiom a dealer on a sales lot, the State of Minnesota imposes and collects a sales tax on the sales of new manufactured homes, in recognition of their status as personal property. When the manufactured home crossed the border into the White Earth Indian Reservation, the state lost the ability to reclassify the personal property as real property due to the limited grant of jurisdiction of 28 U.S.C.A. §1360(b).

There is no question that the government may, in its dealing with the Indians, create property rights which, once vested, even it cannot alter. Williams v. Johnson, 239 U.S. 414, 420, 36 Sup.Ct. 150, 155, 60 L.Ed. 358. Exemption of land from taxation is a property right as established in Morrow v. U.S., 243 F. 854, 856 (8th Cir. 1917), Choate v.

Trapp, 224 U.S. 665, 32 Sup.Ct 565, 56 L.Ed. 949. Extension of this principle leads to the conclusion that exemption of personal property from taxation is a property right. Therefore the state may not adjudicate, by legislation or otherwise, that alters Relators property rights pursuant to the plain language of 28 U.S.C.A. §1360(b).

Cass County v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 Sup.Ct. 1904, 141 L.Ed.2d 90 (1998), dealt only with the taxation of fee simple real property, not the issue of *what* is *real property.* The issue of state taxation of personal property of reservation Indians has been resolved since Moe v. Salish & Kootenai Tribes, 425 U.S. 463, 96 Sup.Ct. 1634, 48 L.Ed.2d 96 (1976). The court needs to address the property classification through the prism of 28 U.S.C.A. §1360(b).

> ... in construing this "admittedly ambiguous" statute, Board of Comm'rs v. Seber, 318 U.S., at 713, we must be guided by that "eminently sound and vital canon," Northern Cheyene Tribe v. Hollowbreast, 425 U.S. 649, 655, n.7 (1976), that "statutes passed for the benefit of dependent Indian tribes are to be liberally construed, doubtful expressions being resolved in favor of the Indians." Alaska Pacific Fisheries v. U.S., 248 U.S. 78, 89 (1918). This principle of statutory construction has particular force in the face of claims that ambiguous statutes abolish by implication Indian tax immunities. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 174 (1973). Cited in Bryan, *supra.*

"... the federal tradition of Indian immunity from state taxation is very strong and that the state interest in taxation is correspondingly weak. Therefore, it is unnecessary to rebalance these interests in every case." California v. Cabazon Band of Mission Indians, 480 U.S. 202, 216, 107 Sup.Ct.

1083, 94 L.Ed.2d 244 (1987) (Footnote 17). The Supreme Court rulings on State ability to tax within a reservation reflect 'a consistent practice of declining to find that Congress has authorized state taxation unless it has made its intention to do so unmistakably clear.' County of Yakima v. Confederated Tribes, 502 U.S. 251, 258, 112 Sup.Ct. 683, 116 L.Ed.2d 687 (1992).

Since there is a clear prohibition against state power to determine a property right in 28 U.S.C.A. §1360(b), the state may not reclassify personal property as real property.

Dated: April 20, 2005

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APPENDIX

STATE OF MINNESOTA
IN SUPREME COURT

A04-713

Tax Court Meyer, J.

Darwin Cogger, et al.,

Relators,

vs.

Filed: January 20, 2005

County of Becker, Office of Appellate Courts

Respondent.

SYLLABUS

Congress has authorized the states to tax real property held in fee by Indians and located within the boundaries of an Indian reservation, and pursuant to that authority a state may define a manufactured home as real property.

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

MEYER, Justice.

The question presented in this case is whether state law controls in defining whether a manufactured home located within the boundaries of an Indian reservation may be taxed as real property. The tax court found that the county has authority to assess an *ad valorem* tax on the land in question and it then applied Minnesota statutes to classify the manufactured home as real property. The Coggers appealed the tax court decision by a writ of certiorari. We affirm the tax court.

Darwin and Janet Cogger are members of the White Earth Band of Chippewa Indians. The Coggers own fee patented title to a plot of land within the boundaries of the White Earth Indian Reservation, located in Becker County, Minnesota. In 1993, the Coggers moved a manufactured home onto their land and have occupied the home as their primary residence since that time. The manufactured home is a 28' x 40' "double wide" home with vinyl skirting. In 1998, the Coggers attached an 8' x 6' porch to their home and added three storage sheds and two wooden decks to the property.

In 2002, the Becker County Assessor assessed an *ad valorem* [1] property tax on the Coggers' property, including the value of the land and the value of the manufactured home, porch, vinyl skirting, three storage sheds, and two wooden decks.[2] The assessor determined that the manufactured home was taxable as real property because it was similarly situated to other manufactured homes that Becker County taxed as real property. The Coggers appealed to the tax court.

The tax court held in favor of Becker County based on United States Supreme Court precedent, federal statutes, and state statutes. The most persuasive factor in the tax court's decision in favor of the County's authority to tax the Coggers' property was that the Coggers own the land in fee patented title. The following factors were the basis for the court's finding that the manufactured home was real property: (1) the manufactured home was similarly situated to other such homes taxed as real property in the county, (2) the home was

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[1] "The essential characteristic of an *ad valorem* tax is that the tax is levied according to the value of property, as determined by an assessment or appraisal. * * * An *ad valorem* property tax is invariably based upon ownership of property * * * ." 71 Am. Jur. 2d *State and Local Taxation* §18 (2001).

[2] The assessment included taxation of the Coggers' garages; however, the Coggers and Becker County agree that the garages are properly classified as real property and subject to the *ad valorem* property tax.

connected to a well and septic tank system, and (3) the Coggers used the home as their primary residence.

On appeal the Coggers concede, and Becker County agrees, that Congress has authorized states to tax real property held in fee by Indians and located within the boundaries of an Indian reservation. But the Coggers contend that Congress has not granted states the authority to define what property may be taxed as real property. Becker County asserts that Congress has necessarily granted all real property taxing authority to the states, and the tax court acted properly when it applied Minnesota statutes in classifying the Coggers' property.

In Minnesota, the legislature has plainly defined real and personal property. Minn. Stat. § 272.03, subds. 1, 2 (2004).[3] The legislature has also defined when a manufactured home, and the structures annexed to it, should

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[3] Minn. Stat. § 272.03, subd.1. Real property.

(a) For the purposes of taxation, "real property" includes the land itself, rails, ties, and other track materials annexed to the land, and all buildings, structures, and improvements or other fixtures on it, bridges of bridge companies, and all rights and privileges belonging or appertaining to the land, and all mines, iron ore and taconite minerals not otherwise exempt, quarries, fossils, and trees on or under it.

(b) A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which cannot be removed without substantial damage to itself or to the building or structure.

* * * *

Subd. 2. Personal property. For the purposes of taxation, "personal property" includes:

* * * *

(3) All improvements upon land the fee of which is vested in the United States, and all improvements upon land the title to which is vested in any corporation whose property is not subject to the same mode and rule of taxation as other property.

be classified as real property and when a manufactured home should be classified as personal property. Minn. Stat. §273.125, subd. 8 (2004).[4] Under these statutes, the Coggers' manufactured home and adjoining property would properly be classified as real property.

We review tax court decisions to determine "whether the tax court lacked jurisdiction, whether the tax court's decision is supported by the evidence and is in conformity with the law, [or] whether the tax court committed any other error of law." Jefferson v. Commissioner of Revenue, 631 N.W.2d 391, 394 (Minn. 2001); Minn. Stat. § 271.10, subd. 1 (2004).

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[4] Minn. Stat. § 273.125, subd. 8. Manufactured homes; sectional structures.

(a) In this section, "manufactured home" means a structure transportable in one or more sections, which is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and contains the plumbing, heating, air conditioning, and electrical systems in it. Manufactured home includes any accessory structure that is an addition or supplement to the manufactured home and, when installed, becomes a part of the manufactured home.

(b) A manufactured home that meets each of the following criteria must be valued and assessed as an improvement to real property, the appropriate real property classification applies, and the valuation is subject to review and -the taxes payable in the manner provided for real property:

(1) the owner of the unit holds title to the land on which it is situated;

(2) the unit is affixed to the land by a permanent foundation or is installed at its location in accordance with the Manufactured Home Building Code in sections 327.31 to 327.34, and rules adopted under those sections, or is affixed to the land like other real property in the taxing district; and

(3) the unit is connected to public utilities, has a well and septic tank system, or is serviced by water and sewer facilities comparable to other real property in the taxing district.

Resolution of the issue raised by the Coggers requires a brief history of federal legislation with respect to Indians and reservation land. Congressional federal policy toward Indians and Indian land has gone through several transformations since it was first interpreted by the Supreme Court in Worcester v. Georgia, 31 U.S. (Pet.) 515 (1832). In Worcester, the Court stated that the federal policy with respect to Indians was to treat the Indian nations as "distinct political communities," with the federal government as the sole body of government authorized to interact with the Indians. Id. at 556-57; see County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251, 257 (1992).

In 1887 the Indian General Allotment Act, commonly known as the Dawes Act, ch. 119, 24 Stat. 388 (repealed 2000), was enacted with the objective of facilitating the government's policy of Indian assimilation. County of Yakima, 502 U.S. at 254. The Dawes Act gave the President power to apportion almost a1.1 tribal land throughout the United States without first obtaining the consent of the affected Indian nation. County of Yakima, 502 U.S. at 254. The Dawes Act also limited alienation and encumbrance of specific tribal land by placing land in trust with the United States for at least 25 years. County of Yakima, 502 U.S. at 254. Once the 25-year period expired, an Indian allottee would receive fee patented title to the land and become subject to the civil and criminal laws of the state where the land was located. *Id.*

The Supreme Court addressed the Dawes Act's 25-year trust period in In re Heff, when it held that Indians would not become subject to the civil and criminal law of the state until the 25-year trust period had expired. In re Heff, 197 U.S. 488, 509 (1905). Congress affirmed the Court's interpretation of the Dawes Act with passage of the Burke Act in 1906, but added that when the President exercised his authority to issue fee patented title prior to expiration of the 25-year trust

period, "all restrictions as to sale, incumbrance, or taxation of said land shall be removed." County of Yakima, 502 U.S. at 255 (citations omitted).

In an effort to return to the policy that dominated United States-Indian relations prior to the Dawes Act era, Congress passed the Indian Reorganization Act in 1934, 25 U.S.C. §§ 461-479 (2002). County of Yakima, 502 U.S. at 255. The objectives of the Indian Reorganization Act were to stop further allotment of Indian land, to indefinitely extend the existing period of trust, and to restore unalloted land to tribal ownership. County of Yakima, 502 U.S. at 255. The Supreme Court has held that the Indian Reorganization Act prevents states from taxing "reservation lands and reservation Indians" unless Congress has made it unmistakably clear that it intends to grant that power to the state. County of Yakima, 502 U.S. at 258. The Court concluded that when Congress rendered Indian lands capable of ownership in fee, "it also rendered them subject to assessment and forced sale for [state] taxes." *Id.* at 263-64. With this history in mind, we proceed to decide the instant case.

The Coggers contend that Congress's grant of authority to the states to tax Indian real property is ambiguous because Congress has not specifically granted to the states the *power to define real property.* Thus, Congress has reserved for itself the power to define what Indian property may be considered real property. They propose that this court create a kind of "federal" definition of real property pursuant to "other statutes, common law, and common sense." The Coggers contend that this court-created definition of real and personal property would define their property as personal property and as such it would not be subject to state taxation. Becker County asserts that the authority to tax is statutory and varies from state to state; therefore, Congress must have contemplated that each state would tax Indian land in the same manner it taxed all other property within that state.

In County of Yakima, the Supreme Court addressed

precisely whether Congress intended to authorize states to tax real property held in fee by Indians and located within reservation boundaries. Yakima County had attempted to foreclose on land located within the reservation in which the tribe or its members had an interest, where *ad valorem* taxes were past due. The Yakima Nation contended that federal law prohibited *ad valorem* taxes on fee patented land held by the tribe or its members. The Court looked to sections 5 and 6 of the Dawes Act to determine whether Congress granted states the authority to tax fee patented land. County of Yakima, 502 U.S. at 264. The Court reasoned that the Burke Act clarified the intent of Congress in sections 5 and 6 of the Dawes Act that "fee ownership would free the land of 'all restrictions as to sale, incumbrance, or taxation.'" County of Yakima, 502 U.S. at 264 (citations omitted). The Court concluded that Congress in the Burke Act proviso "manifested a clear intention to permit the state to tax such Indian lands" and held that the *ad valorem* property tax levied by Yakima County was valid. County of Yakima, 502 U.S. at 259 (citations omitted).

The Yakima Court made it clear that Congress intended to grant the states authority to assess *ad valorem* taxes on real property owned by Indians in fee title on Indian land. Congress did not define real or personal property in its grant of authority. We have previously held that "the power of taxation is inherent in sovereignty and * * * under our system of government it reposes in the Legislature * * *." Bemis Bros. Bag Co. v. Wallace, 197 Minn. 216, 222, 266 N.W. 690, 693 (1936). Implicit in the state's power to tax is the authority to define what property or goods to tax, subject of course to constitutional limitations. Thus, it follows that Congress granted to the states the authority to subject Indian land to its real property taxation scheme, including the authority to determine the definition of real property. The Coggers cite no federal or state authority to the contrary. We conclude that Becker County may apply Minnesota's

definition of real property to the Coggers' property.

We hold that the tax court did not err when it applied the Minnesota statutes to the classification of the Coggers' property.

Affirmed.

STATE OF MINNESOTA **JUDGMENT**

Darwin Cogger, et al., Relators, Supreme Court
vs.
County of Becker, Respondent Appellate Court # A04-713

Trial Court # C3021625

Pursuant to a decision of Supreme Court duly made and entered, it is determined and adjudged that the decision of the Tax Court herein appealed from be and the same hereby is affirmed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed: March 21, 2005 FOR THE COURT

*Attest:*_____
Frederick K. Grittner
Clerk of the Appellate Courts

*By: s/*_____
Assistant Clerk

STATE OF MINNESOTA **SUPREME COURT**

TRANSCRIPT OF JUDGMENT

I, Frederick K. Grittner, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears porn the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul
March 21, 2005
Dated

Frederick K. Grittner
Clerk of the Appellate Courts

By: s/_____
Assistant Clerk

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April 17, 2005

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Re: Darwin Cogger, et ux, Relators
v. County of Becker, Respondent
Minnesota Supreme Court File No. A04-713

Dear Sir:

Please be notified pursuant to Minnesota Rule of Civil Procedure 24.04 and United States Supreme Court Rules 14.l(e)(v) and 29.4(c), a Petition for Writ of Certiorari will be filed with the United States Supreme Court by Relators which draws the constitutionality of M.S. §273.125, as applied to a manufactured home within the boundaries of a federally recognized Indian Reservation. As such, 28 U.S.C. §2403(b) may apply to this matter.

Respectfully,

s/_____

Ronald R. Bradley

cc: Gretchen D. Thilmony, Assistant Becker Co. Attorney
Darwin and Janet Cogger